STATE OF HAWAI'I DEPARTMENT OF LAND AND NATURAL RESOURCES OFFICE OF CONSERVATION AND COASTAL LANDS Honolulu, Hawai'i

180-Day Exp. Date: December 17, 2013

December 13, 2013

Board of Land and Natural Resources State of Hawai'i Honolulu, Hawai'i

REGARDING:

Conservation District Use Application (CDUA) HA-3676

for a Single Family Residence (SFR) & Related

Improvements

APPLICANT/ LANDOWNER:

David A. Yermian

LOCATION:

Keonepoko Iki, Puna, island of Hawai'i

TMKs:

(3) 1-5-009:035

AREA OF PARCEL:

Approximately (≈) 2.181-acres [95,004-ft²]

USE:

 \approx .5-acres [21,780-ft²]

SUBZONE:

Resource

DESCRIPTION OF AREA AND CURRENT USE (EXHIBITS A, B, C & D)

The subject area exists in the Puna District of the island of Hawai'i at the makai portion of Keoepoko Iki ahupua'a near the Hawaiian Beaches Subdivision. The property abuts the ocean to the northeast; there is a private residence to the southeast; the Government Road to the southwest; and private undeveloped property to the northwest. The parcel is approximately 2.181-acres and lies within the Resource subzone of the Conservation District.

According to the applicant, the lot was cleared several decades ago in connection with a former residence that has since been demolished. A 1965 aerial photo and County records indicate the area was previously cleared. Only a part of the concrete and hollow tile foundation of a former residence is present.

The lot is located on the flank of Kilauea volcano upon lava flows created about 200 to 750-years ago. The soil is well drained and noted as Malama extremely cobbly highly decomposed plant material with 2 to 40 slopes by the US Soil Conservation Service. This type of soil may be unsuitable for cultivation. The area receives an average of 120-inches of rain with temperatures around 75° F.

Currently, there is no electrical or county water that services the property. Electricity and telephone poles and lines are present on the mauka side of Government Beach Road. Access to the parcel is via the unimproved Government Beach Road that extends from the Hawaiian Beaches subdivision. There are no vistas or ocean views from the road. Illegal dumping takes place along this road. There are no public trails or mauka/Makai shoreline access in the vicinity.

The majority of the vegetation consists of non-native vegetation with the exception of the makai portion where some naupaka and hala trees are present. A grove of coconuts and Cook Island Pines are also present in the makai area of the lot. A flora survey indicated no rare, threatened or endangered plant species. According to the applicant the 'dense, shady jungle' is dominated by non-native species such as Autograph tree, Chinese banyan, octopus tree, strawberry guava and gunpowder tree with remnants of hala. The Makai area is dominated by coconut palms and naupaka.

No threatened or endangered avifauna was observed. Common shorebirds may visit the rocky shoreline. Common shorebirds may be observed on the rocky shoreline. Introduced mammals that may be present include the feral cat, pigs and mongoose and rats. Although not observed on the property, endangered species such as the Hawaiian Hawk, Hoary Bat, Petrel and Newell's Shearwater may overfly or be present in the general area.

Due to the history of mechanical clearing and flattening of the lava surface, the likelihood of encountering subsurface resources on the parcel are very remote. The applicant has completed an archaeological survey of the property and a Cultural Impact Assessment. Based upon those studies, there does not appear to be any evidence of archaeological resources on the site and the CIA did not reveal any cultural resources or practices occurring on or near the proposed residential site that may be affected by the construction. The State Historic Preservation Division concurred and accepted this determination. The rugged shoreline area may be utilized for fishing or gathering.

Regarding this area, the USGS's Atlas of Natural Hazards in the Hawaiian Coastal Zone has rated the overall hazard assessment as moderately high in regards to tsunami, high waves, storms, sea level rise and volcanic/seismic activity.

Coastal Erosion Study (EXHIBIT E)

A coastal erosion analysis was completed by a qualified professional consultant geologist that noted the lava flow underlying the property and forming the coast is a dense 'a'a flow. The coastline has small cliffs and due to Puna's young geological age, little sandy beach development. There is little reef offshore. The beach per se, is a slightly sloping accumulation of well-worn cobbles and boulders. There is a scoured 'a'a shelf that extends 60-feet to a 10-15-ft sea cliff that appears to be the shoreline and about 8-ft from the property line.

The Erosion Study states that the cliff is very stable with little jointing or fracturing of the 'a' a interior. There is no undercutting of the cliff substrate and there does not appear to be horizontal erosion. Available aerial photographs show no measureable change in position of the overall coastal sea-cliff or of the vegetation line since the earliest 1954

photo. However quantitative measurements could not be derived from aerial photos. However quantitative assessment of tides and coastal profiles were utilized to determine that the horizontal erosion rate is very near zero. The coastline is not characterized with a continuous/steady rate of erosion (or accretion) but may be impacted by unpredictable and episodic events due to seismic activity associated with Kilauea.

PROPOSED USE (EXHIBITS F, G, H, I & J)

According to the application, the proposed house site is located in the interior of the lot in an existing clearing and setback approximately 110-feet from the makai property boundary at an elevation of 36-feet above sea level outside of the flood zone. An area less than half an acre would be cleared for the construction of the house, driveway and related utilities with minimal grading. The site was chosen to avoid shoreline vegetation and take advantage of any existing clearing that provides sunlight and air. 6-10 coconut trees will be removed.

The proposed residence would be a two-story structure, slab on grade and approximately 25-feet in height with 3 bedrooms, 2 bathrooms with a great room comprising the kitchen, dining and living room areas, a family room, 2 covered lanais and a garage of approximately 4,470-ft². Other planned improvements include an individual wastewater system, a 12,000 gallon water tank, utility poles and lines along the driveway, a paved driveway, stone paving, some landscaping consisting primarily of native and Polynesian species and a sliding gate entrance.

Except for clearing for the residential use and driveway, the existing vegetation on the lot will mostly be left intact. No modification to the terrain or vegetation within the minimum 110-ft. area between the shoreline/sea cliff and the residence will occur.

Mitigation for the island wide-ranging endangered Hawaiian hoary bat and Hawaiian Hawk will be done through avoidance. To avoid impacts to the endangered but regionally wide spread Hawaiian hawk and bat, construction activities that would remove vegetation will not take place between June 1 and September 15 to protect the Hawaiian Hoary Bat. Should land clearing activities occur between the months of March and September, a pre-construction hawk nest search by a qualified ornithologist will be conducted. Should Hawaiian Hawks be present, no land clearing will be allowed until October. Exterior lights will be shielded to protect avifauna.

No visual impact during construction is expected as the site will be shielded by the dense vegetation. The project is not expected to affect air quality or noise levels long term. Brief and minor adverse effects would occur during construction. Construction activities will take place in compliance with Federal, State and Hawaii County laws. Standard Best Management Practices will be observed.

The applicant has identified a number of mitigative measures, conditions and practices within the Environmental Assessment related to handling of hazardous material, resource protection and potential coastal hazards to ensure that the proposal will have minimal effects on the natural and cultural resources of the land. Further the applicant has stated the owner would agree to a CDUP and/or deed condition that would prevent any future request for shoreline hardening to protect the residence, regardless of hardship and a

condition requiring moving or dismantling the home if sea level rise eventually threatens the integrity of the structure. As such these proposed measures, conditions and practices are incorporated into the permit.

Alternatives

The applicant has not proposed any alternatives to the proposed action other than no action- the residence would not be built and the lot may continue to be the scene of illegal dumping that appears to be a severe problem upon the surrounding vacant properties. No other uses are desired by the landowner for the property.

SUMMARY OF COMMENTS

The application was referred to the following agencies for their review and comment: the **State**: Department of Health; Office of Hawaiian Affairs; Office of Environmental Quality Control; Department of Land and Natural Resources Divisions of: Conservation and Resource Enforcement, Engineering, Forestry and Wildlife, Na Ala Hele, Hawai'i District Land Office, Historic Preservation; and the **County of Hawai'i:** Department of Planning, the Fire Department, the Department of Public Works and Malama O Puna. In addition, this application was also sent to the nearest public library, the Pahoa Public Library, to make this information readily available to those who may wish to review it.

Responses were received and have been summarized from the following agencies:

STATE OF HAWAII

DEPARTMENT OF HEALTH

Environmental Planning Office No comment

DEPARTMENT OF LAND AND NATURAL RESOURCES

Division of Conservation and Resource Enforcement
No comments

Engineering

The Flood Zone Designation for the project site is located in Minimal Tsunami Inundation Areas. The National Flood Insurance Program does not have any regulations for developments within the Minimal Tsunami Inundation areas.

Office of Conservation and Coastal Lands (OCCL)

The proposed siting of the 12,000-G water tank is within the 25-ft side yard setback area. Is there a particular reason why the tank is located here or could it be sited elsewhere on the property? Also the placement of the utility lines has not been sited on the site plan. Please site all proposed improvements on the site plan and plan profiles.

-Applicant's response

All proposed above ground improvements have been moved out of the 25-foot side yard setback area. The site plans now indicate this, as well as depicting the electric utility lines, which are sited along the driveway.

COUNTY OF HAWAI'I

Fire Department

The Hawaii Fire Department requires that a copy of the final drawings regarding the Fire Department Access and Water Supply be submitted to the Fire Prevention Bureau for review and approval prior to construction. Applicable sections of the Uniform Fire Code should be adhered to.

-Applicant's response

Applicable sections of the Fire Code have been taken into consideration in the further development of the site plans for the proposed residence, especially in relation to the size and configuration of the access drive and turn-around area, and the relative location of the water supply and Fire Department connection, which are reflected in the latest site plans. The applicant will abide by these standards.

Department of Planning, dated October 09, 2013

We have determined that the proposed construction of the single-family dwelling and related improvements, as presented in Special Management Area Use Permit assessment Application No. 13-0000955 (SAA 13-955), are exempt from the definition of "development" and shall not require further review against the Special Management Area guidelines. However, any substantive changes to the project will require further review by the County and possibly the submittal of another SMA Use Permit Assessment application.

ANALYSIS

After reviewing the application, by correspondence dated June 24, 2013, the Department has found that:

- 1. The proposed use is an identified land use in the Resource subzone of the Conservation District, pursuant to the Hawaii Administrative Rules (HAR) §13-5-24, R-7, SINGLE FAMILY RESIDENCE (D-1), A single family residence that conforms to design standards as outlined in Chapter 13-5. Please be advised, however, that this finding does not constitute approval of the proposal;
- 2. Pursuant to §13-5-40 of the HAR, a Public Hearing will not be required; and
- 3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact to the environment (FONSI) is anticipated for the proposed project.

The FONSI to the environment was published in the October 8, 2013 Environmental Notice.

Satisfaction of the Special Management Area has been met with documentation dated October 21, 2013 from the County of Hawai'i which states that the proposed construction

of the single-family dwelling and related improvements, as presented, are exempt from the definition of "development."

CONSERVATION CRITERIA

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30, HAR.

1. The proposed land use is consistent with the purpose of the Conservation District.

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare.

The proposed use is an identified land use in the Resource subzone of the Conservation District; as such, it is subject to the regulatory process established in Chapter 183C, HRS and detailed further in Chapter 13-5, HAR. This process provides for the application of appropriate management tools to protect the relevant resources, including objective analysis and thoughtful decision-making by the Department and Board of Land and Natural Resources.

No rare, threatened or endangered plant or animal species or significant habitats are known to exist on the subject property. The applicant has completed an archaeological survey of the property and a Cultural Impact Assessment. Based upon those studies, there does not appear to be any evidence of archaeological resources on the site and the CIA did not reveal any cultural resources or practices occurring on or near the proposed residential site that may be affected by the construction.

2. The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur.

The objective of the Resource subzone is to ensure, with proper management, the sustainable use of the natural resources of those areas. A Single Family Residence is an identified land use pursuant to the Hawaii Administrative Rules, §13-5-24, R-7, SINGLE FAMILY RESIDENCE (D-1) A single family residence that conforms to design standards as outlined in Chapter 13-5, HAR.

Providing for one SFR and associated improvements within less than a half an acre of a more than two-acre parcel should not adversely affect the open space and public views along the shoreline. The applicant has stated the remaining portion of the property shall remain in its natural state. The proposed residence will put a presence on the property that will hopefully stop the illegal roadside dumping.

3. The proposed land use complies with provisions and guidelines contained in Chapter 205, HRS, entitled "Coastal Zone Management," where applicable.

Staff believes the proposed project complies with provisions and guidelines contained in Chapter 205, HRS regarding Coastal Zone Management. Lateral access along the shoreline will not be impacted; no significant public views will be impacted, there will be minimal grading; and Best Management Practices (BMPs) will be implemented to minimize potential impacts to coastal ecosystems during construction.

An approved wastewater treatment system will be utilized to dispose of wastewater and the residence lighting will be designed so as to not allow artificial light to directly illuminate shoreline and ocean waters.

Regarding the Special Management Area, the proposal has been exempted from the definition of development by the County of Hawai'i.

4. The proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community, or region.

Staff believes the proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community or region provided that mitigative measures are implemented and the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard that the project may cause.

- There may be short-term adverse effects on the surrounding area associated with construction activities such as potential noise and air quality.
- 5. The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding area, appropriate to the physical conditions and capabilities of the specific parcel or parcels.

The property is in the vicinity of the established rural residential subdivision, Hawaiian Beaches Subdivision. The adjacent lot has been developed with a residence and subsistence farming. Therefore staff believes the proposal is compatible with the locality.

The home design is modest and shall adhere to compatibility provision requirements of Exhibit 4 Single Family Residential Standards of Chapter 13-5, HAR.

6. The existing physical and environmental aspect of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, which ever is applicable.

The site does not contain unique features either topographically or geologically. Natural or existing vegetation consists of non-native plants and the biological report concluded there is little biological concern due to the non-native plants and the invasive nature of the vegetation of the parcel. The landscaping plan proposes

to reintroduce native plantings to replace invasive species in the areas immediately surrounding the residence.

The residence would be obscured from view by the existing vegetation along the Government Beach Road and existing views to and along the coast. Staff believes the open space characteristics of the area will be preserved.

7. Subdivision of the land will not be utilized to increase the intensity of land uses in the Conservation District.

No subdivision of land is proposed for this project.

8. The proposed land use will not be materially detrimental to the public health, safety and welfare.

Staff believes the proposed land use will not be materially detrimental to the public health, safety and welfare as mitigated. With the incorporation of an appropriately designed and operated individual wastewater system, combined with other BMPs identified, the proposed residential land use will not result in materially detrimental impacts to public health, safety and welfare. Staff notes the landowners are aware of the inherent dangers of living in close proximity to the sea.

CULTURAL IMPACT ANALYSIS

An archaeological survey has been completed and found no evidence of archaeological resources. The Cultural Impact Assessment of the property and its history based on archival research and oral consultation did not reveal any cultural resources or practices occurring on or near the site that may be affected by the proposed construction of the residence.

There are no springs, land features, or caves that may be culturally significant. The applicant has noted and is aware of the cultural resources such as coastal access, fishing and gathering. The proposed residence will be set back a minimum of 110-feet from the shoreline and should not impose or inhibit any existing or future traditional use of the shoreline area fronting the property.

In the event that legitimate claims of traditional and customary practices were not identified, the landowner would provide the access as required by State law.

According to the applicant, any traditional and customary rights exercised by native Hawaiians on the property will continue. It is believed that the project will not impair, diminish, or preclude customary or traditional native Hawaiian rights and no action is necessary to protect these rights.

DISCUSSION

The proposed house site is located in the interior of the lot in an existing clearing and setback approximately 110-feet from the makai property boundary at an elevation of 36-feet above sea level outside of the flood zone. The proposed residence would be a two-

story structure, slab on grade and approximately 25-feet in height with 3 bedrooms, 2 bathrooms with a great room comprising the kitchen, dining and living room areas, a family room, 2 covered lanais and a garage of approximately 4,470-ft². Other planned improvements include an individual wastewater system, a 12,000 gallon water tank, utility poles and lines along the driveway, a paved driveway, stone paving, some landscaping consisting primarily of native and Polynesian species and a sliding gate entrance.

The proposed land use is consistent with Chapter 13-5, Hawaii Administrative Rules, Exhibit 4, Single Family Residential Standards. Compatibility provisions such as the use of earth toned or compatible colors with the surrounding area will be utilized on the exterior of the residence. The proposed residence will be built as a single structure that will support the efficient use of energy and materials and will be designed in a manner that will allow for use of natural ventilation and lighting. Much of the tree canopy surrounding the house will be retained. The disturbance to the site will be limited to the area of the home, utilities and driveway. The Makai portion of the property where there is a concentration of native vegetation will be left undisturbed.

Land clearing activities will take place on less than half an acre in compliance with Federal, State and Hawaii County laws. Standard Best Management Practices will be observed. Within the Environmental Assessment, the applicant has identified a number of mitigative measures, conditions and practices to ensure that the proposal will have minimal effects on the natural and cultural resources of the land. Further the applicant has stated the owner would agree to a CDUP and/or deed condition that would prevent any future request for shoreline hardening to protect the residence, regardless of hardship and a condition requiring moving or dismantling the home if sea level rise eventually threatens the integrity of the structure. As such these proposed measures, conditions and practices are incorporated into the permit.

Staff believes that the project will have negligible adverse environmental or ecological effects provided that best management practices and mitigation measures as described in the application and environmental assessment, and as required by rule or laws, are fully implemented.

RECOMMENDATION

Based on the preceding analysis, staff recommends that the Board of Land and Natural Resources APPROVE Conservation District Use Application HA-3676 for a Single Family Residence (SFR) & Related Improvements located at Keonepoko Iki, Puna, island of Hawai'i, TMK:(3) 1-5-009:035 subject to the following conditions:

- 1. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;
- 2. The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of

the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;

- 3. The permittee shall comply with all applicable department of health administrative rules;
- 4. The single family residence shall not be used for rental or any other commercial purposes unless approved by the board. Transient rentals are prohibited, with the exception of wilderness camps approved by the board;
- 5. The permittee shall provide documentation (e.g., book and page or document number) that the permit approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
- 6. Before proceeding with any work authorized by the department or the board, the permittee shall submit four copies of the construction plans and specifications to the chairperson or an authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to the permittee. Plan approval by the chairperson does not constitute approval required from other agencies;
- 7. Unless otherwise authorized, any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the chairperson, and shall be completed within three years of the approval of such use. The permittee shall notify the department in writing when construction activity is initiated and when it is completed;
- 8. All representations relative to mitigation set forth in the accepted application and environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;
- 9. Should sea level rise endanger the approved land use, the land use shall be removed or relocated. No shoreline hardening shall be allowed to protect the integrity of any approved land use;
- 10. The applicant shall plan to minimize the amount of dust generating materials and activities. Material transfer points and on-site vehicular traffic routes shall be centralized. Dusty equipment shall be located in areas of least impact. Dust control measures shall be provided during weekends, after hours and prior to daily start-up of project activities. Dust from debris being hauled away from the project site shall be controlled. Landscaping and dust control of cleared areas will be initiated promptly;
- 11. The permittee shall notify the Office of Conservation and Coastal Lands (OCCL) in writing prior to the initiation and upon completion of the project;

- 12. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact SHPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
- 13. The permittee shall utilize Best Management Practices for the proposed project;
- 14. During construction, appropriate mitigation measures shall be implemented to minimize impacts to the aquatic environment, off-site roadways, utilities, and public facilities;
- 15. The single-family residence shall conform to the single-family residential standards included as Exhibit 4 of the Hawaii Administrative Rules, Chapter 13-5;
- 16. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
- 17. In issuing the permit, the department and board have relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;
- 18. When provided or required, potable water supply and sanitation facilities shall have the approval of the department of health and the county department of water supply;
- 19. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
- 20. Obstruction of public roads, trails, lateral shoreline access, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, lateral beach access, or pathways acceptable to the department;
- 21. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
- 22. The permittee shall obtain a county building or grading permit or both for the use prior to final construction plan approval by the department;
- 23. Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the light directly illuminates or is directed to project across

property boundaries toward the shoreline and ocean waters, except as may be permitted pursuant to section 205A-71, HRS. All exterior lighting shall be shielded to protect the night sky;

- 24. The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law; and
- 25. Failure to comply with any of these conditions shall render this Conservation District Use Permit void under Chapter 13-5, as determined by the chairperson or board.

Respectfully submitted,

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K. Tiger Mills, Staff Planner

Office of Conservation and Coastal Lands

Approved for submittal:

William J. Aila, Jr., Chairperson

Board of Land and Natural Resources

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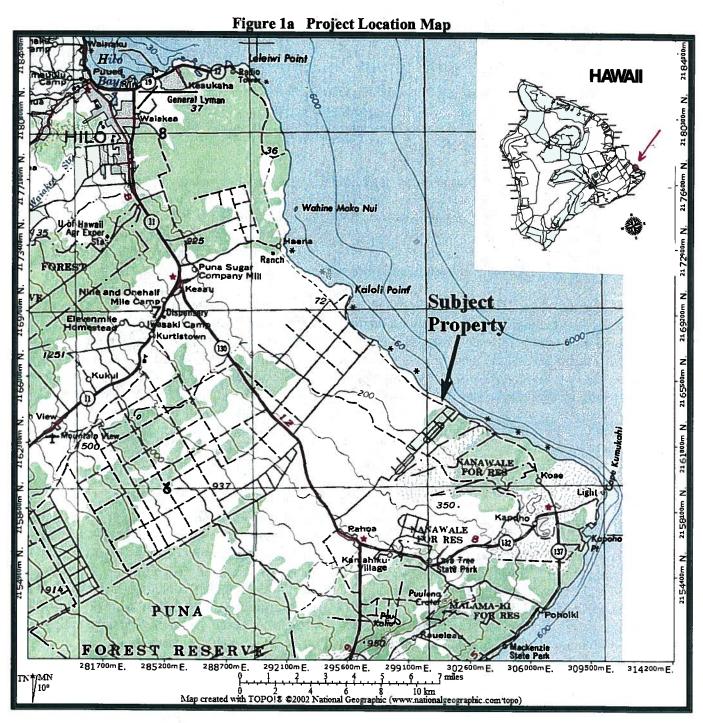


EXHIBIT A

Yermian Single-Family Residence at Keonepoko Iki Environmental Assessment

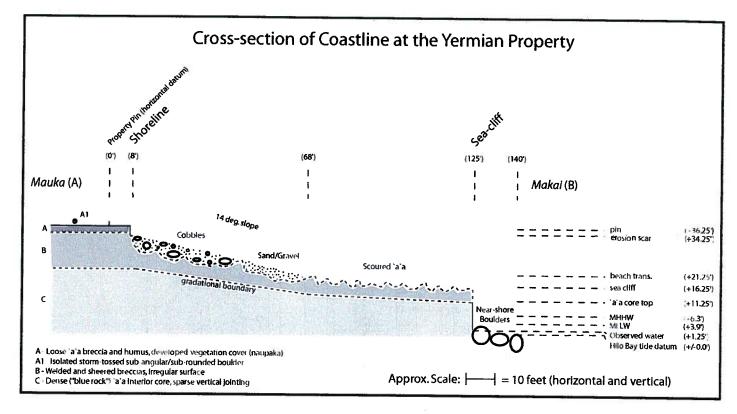
Site Photos. Top: Interior Vegetation. Bottom: Former Dumping on Adjacent Property

Yermian Single-Family Residence at Keonepoko Iki Environmental Assessment

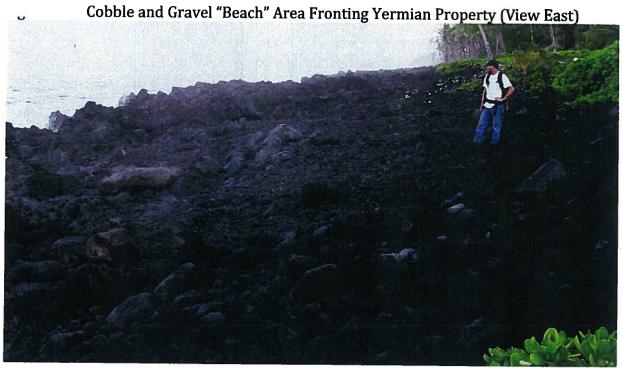


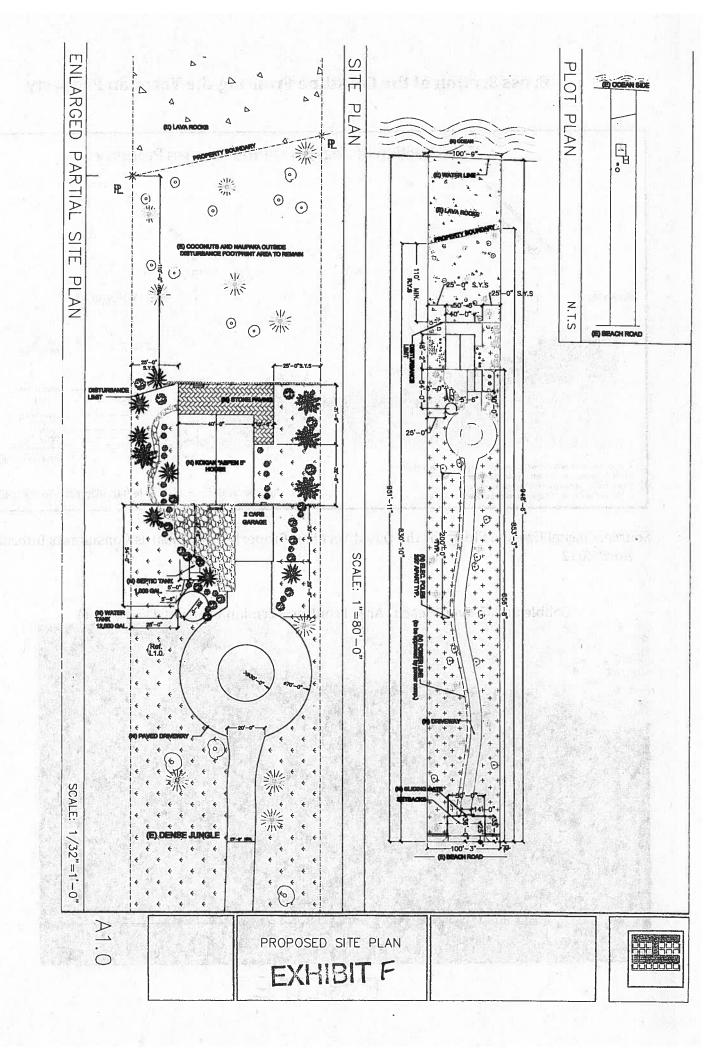
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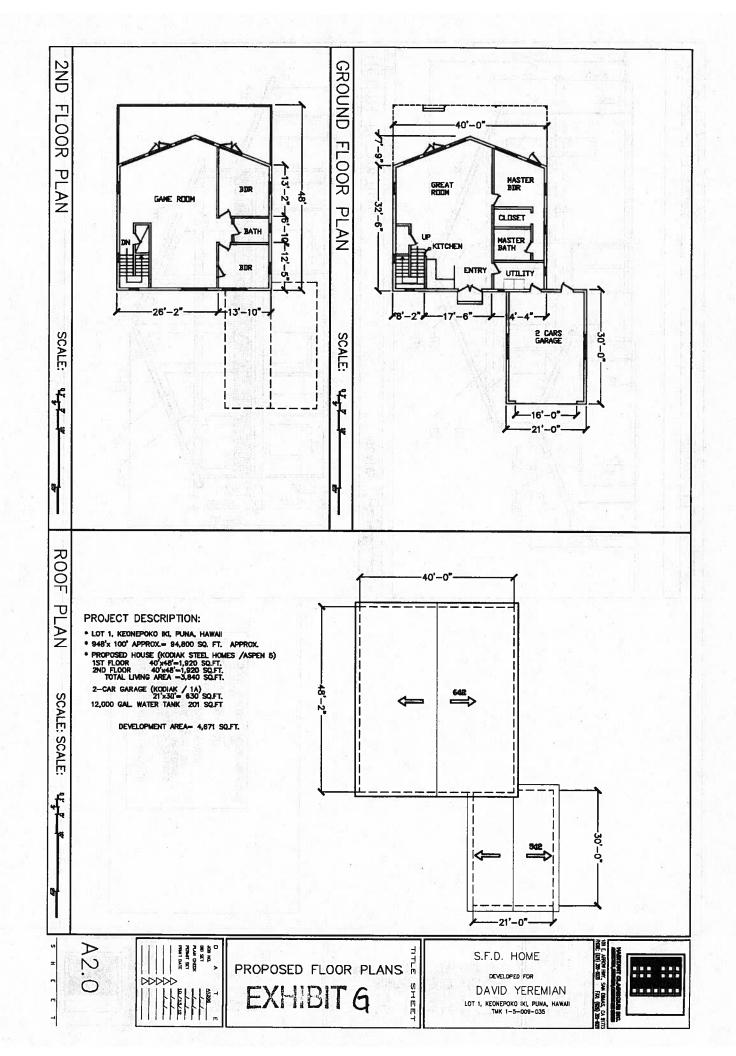
Cross Section of the Coastline Fronting the Yermian Property

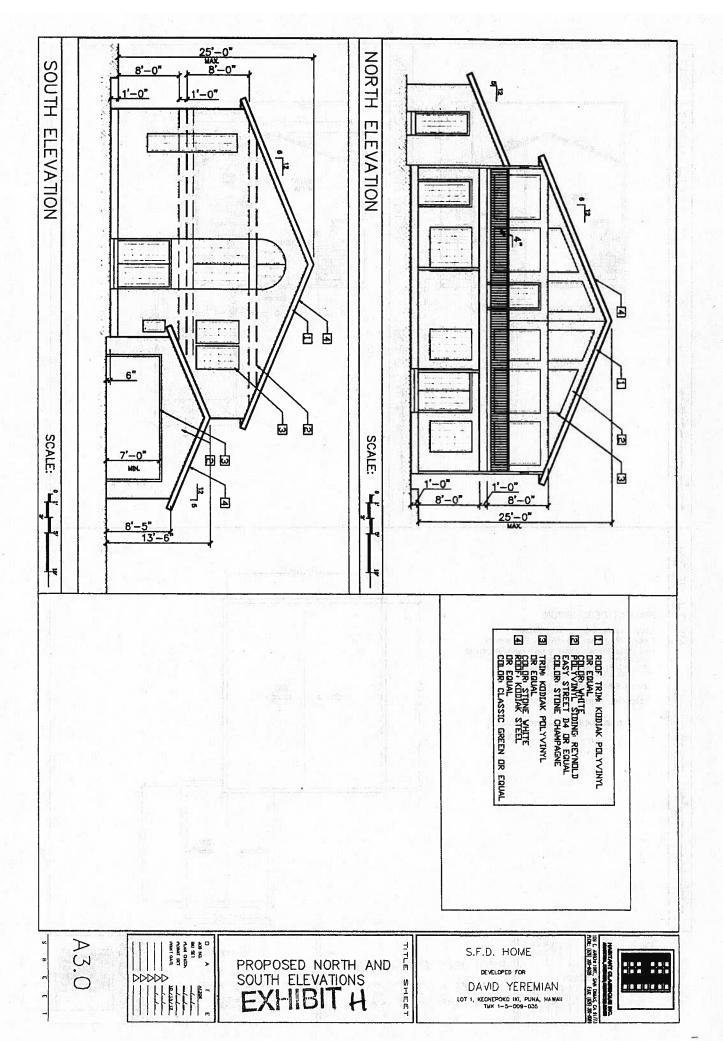


Source: Coastal Erosion Study for the David Yermian Property; Geohazards Consultants International, Inc. April 2012









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